

Nonprofit Organizations Committee Legal Quick Hit:

Privacy and Data Security for Your Nonprofit: Understanding Your Client's Legal Obligations and Minimizing Legal Risk

MODERATOR: JEFFREY S. TENENBAUM, ESQ.

TUESDAY, OCTOBER 14, 2014

PRESENTER: EMILIO W. CIVIDANES, ESQ.

3:00 p.m. ET



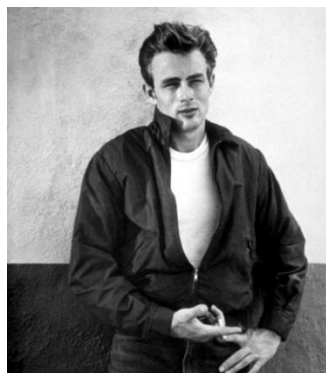
Program Overview

- The Cyber Threat Landscape
- Top 4 Risks to Nonprofits
- Risks Are Getting Riskier...
 - Part 1: Top 4 Industry Trends
 - Part 2: Top 4 Legal Developments
- Five Steps to Mitigating Privacy and Data Security Risks



The Cyber Threat Landscape

Four Horsemen of the “Cybocalypse”



Rogue/Disgruntled



“Hacktivist”



Advanced Persistent Threat



Organized Crime



What's the "Catch"?

Information Targeted by Attackers

Category	Objective	Examples
Financial	Personally Identifiable Info	Identity Theft or Inadvertent Loss
	Payment Card Data	TJX, Hannaford, Home Depot
	Identifying Data	JP Morgan (76m hhlds)
Intelligence	Intellectual Property	Corporate Misdeeds
	Attorney/Client Comm.	Gipson Hoffman & Pancione
	R&D Material	Across industries
	Government Plans	Dem. Nat'l Committee
	Military Secrets	F35 Joint Strike Fighter
	Energy Infrastructure and Architecture	Rumored Data Collection
Other	Destruction/Disruption/Leak	Insiders, Hacktivists



But I'm Just a Nonprofit...What Do I Have to Fear?

TECHNOLOGY | NYT NOW

Russian Hackers Amass Over a Billion Internet Passwords

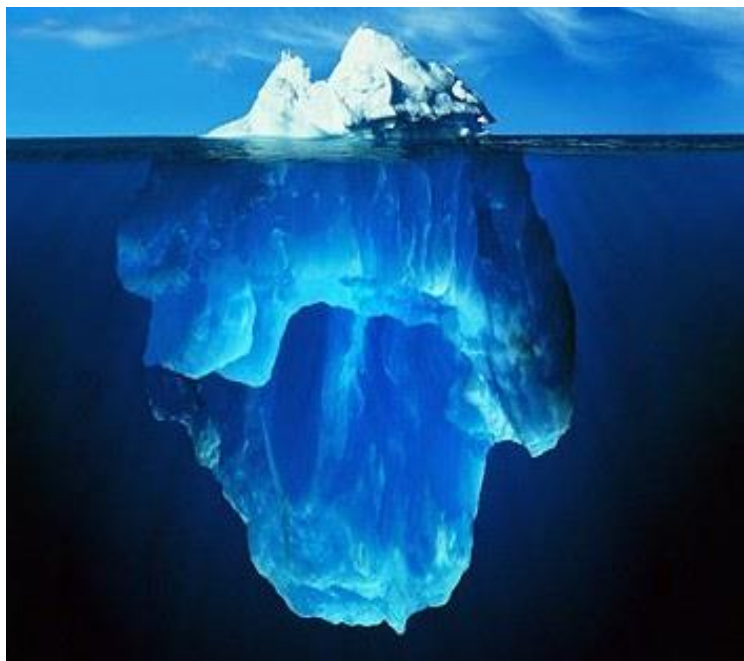
By NICOLE PERLROTH and DAVID GELLES AUG. 5, 2014

A Russian crime ring has amassed the largest known collection of stolen Internet credentials, including 1.2 billion user name and password combinations and more than 500 million email addresses, security researchers say.



Top 4 Risks to Nonprofits

Financial Costs of a Data Breach



- Forensic consultants
- Lawyers
- Call centers
- Credit monitoring
- Public relations crisis response and repair



Reputational Damage

- Front page news
- Notifying donors, employees, consumers, government agencies
- Public outcry
- Erosion of donor trust
- Antipathy of service constituency; boycotts



Government “Fine”-Tuning

- Watchdogs have a lot to watch in today’s nonprofit world:
 - Electronic solicitations (CAN-SPAM)
 - Donation platforms (breach laws)
 - Donor list management (privacy policies)
 - Social media outreach (COPPA)

- Government handing out fines to nonprofits



Md. nonprofit serving disabled reports data breach
 By DAVID DISHNEAU - Associated Press - Monday, March 17, 2014

For Immediate Release - July 23, 2014

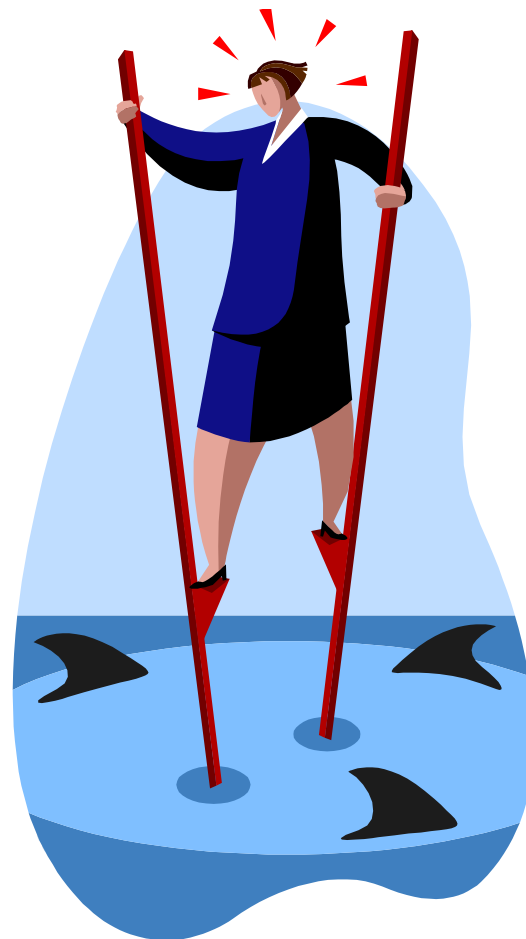
Women & Infants Hospital to Pay \$150,000 to Settle Data Breach Allegations Involving Massachusetts Patients

Hospital Allegedly Failed to Protect Personal Information and Protected Health Information of More Than 12,000 Massachusetts Patients



A Not-So-Class Act: More Privacy/Data Security Lawsuits

- Organizations have been sued for:
 - Failing to maintain reasonable data security
 - Collecting personal information with payment
 - Sharing data with third parties
 - Mobile device practices

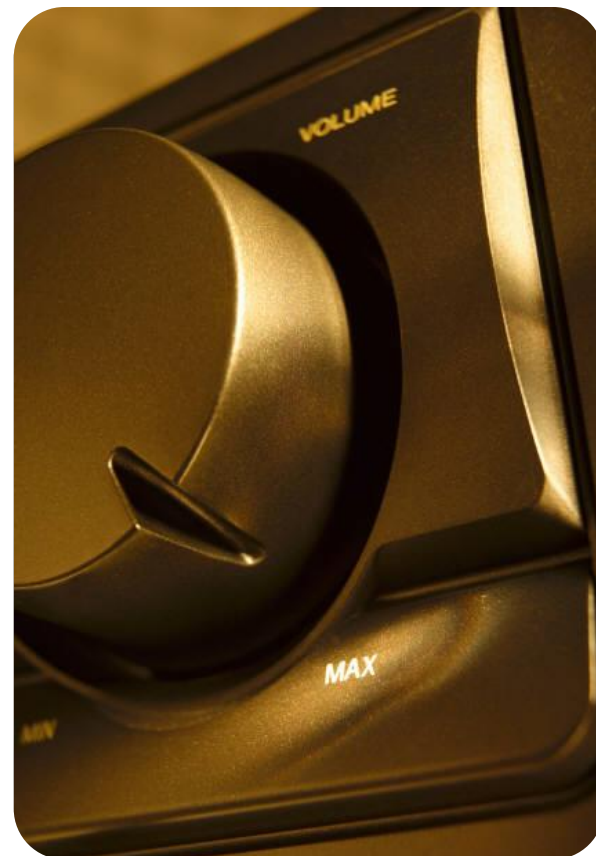


Risks Are Getting Riskier...

Part 1: Top 4 Industry Trends

Data Collection: Turn up the Volume of Data Flow

- Online giving: fastest growing fundraising channel for nonprofits
- Social media: key to donor and constituent engagement
- Move to mobile and “internet of things”: geolocation and more



The Growing Uses of Data: More of It, More from It



- Big Data: Opening the door for analytics and predictive modeling
 - Boost donor network and fundraising opportunities
 - Extend reach of services and solicitations
 - Develop new products and services



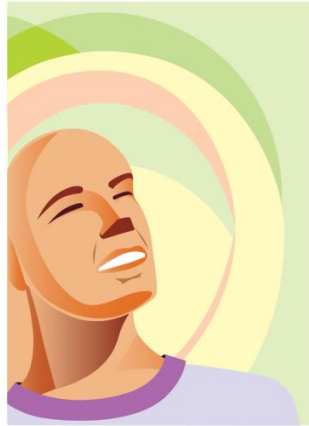
Data Transfer and Storage: All Systems Cloud and Clear

- Nonprofits gain from hosted IT services and cloud-based solutions that cut costs and free up resources.
- More vendors means more third-party access to data.



- Data sharing fosters collaboration within and beyond the organization.

The Growing Value of Data



1994



2014

- Data revolution driving all decision-making for entities and individuals alike
- Growing dependence on data boosts ROI for cybercriminals

Risks Are Getting Riskier...

Part 2: Top 4 Legal Developments

Legislative and Enforcement Push after High Profile Breaches



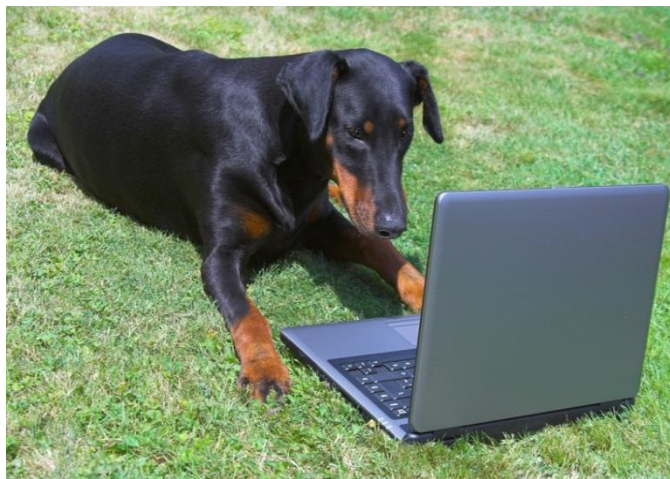
Security Standards for a New World: “Reasonableness”

- Data security
 - Duty of care: Anticipate foreseeable risks

- Preparation
 - Incident response planning a must



State Government Watchdogs: Lots of Bark and Lots of Bite



- Innovation means new practices
- New practices mean more scrutiny
- Privacy policies, terms of use, types of data



Expect the Unexpected: The Evolving Privacy Landscape

- Government surveillance revelations driving public sensitivities



- Expansion of PII (geolocation, biometric) transforming nature of privacy



Summary

- Top 4 Risks to Nonprofits
 - Cost of a breach
 - Reputational damage
 - Government fines
 - Class action lawsuits
- Risks Getting Riskier: Industry Trends and Legal Developments
- Top 4 Industry Trends
 - Data collection; use; transfer/storage; value
- Top 4 Legal Developments
 - Legislative/enforcement push; security standards; UDAP enforcement; shifting expectations of privacy



Five Steps to Mitigating Privacy and Data Security Risks

Five Steps to Mitigating Privacy/Data Security Risks

- 1) Accept that this is an enterprise-wide risk, not just an IT issue.
 - Stakeholders include but are not limited to the Boardroom, HR, Audit, IT and Legal.



Five Steps to Mitigating Privacy/Data Security Risks

- 2) Identify your organization's most critical data assets.
 - Where do these assets reside?
 - Who has access to these assets?



Five Steps to Mitigating Privacy/Data Security Risks

3) Identify vendors used for business functions involving critical data assets.

- Seek to transfer risk contractually
- Understand where data is stored
- Understand the level of vendor security
- Require vendor to buy cyber insurance



Five Steps to Mitigating Privacy/Data Security Risks

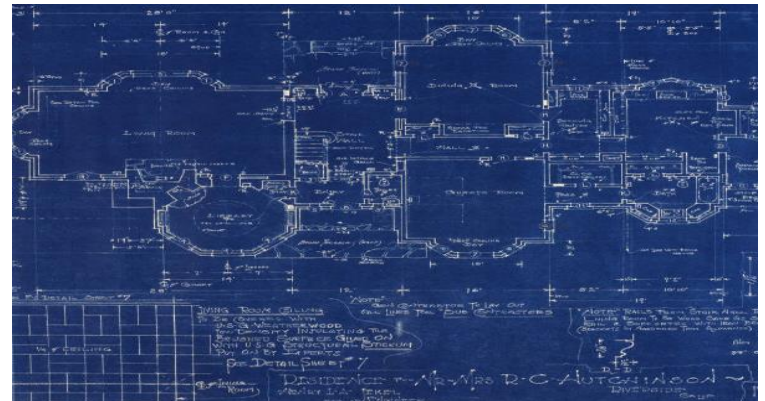
4) 4) Layered Defense – assume attackers will penetrate your network.

- Firewalls to protect perimeter
- Intrusion detection systems
- Two factor authentication
- Anti-virus
- Encryption
 - Enterprise-wide
 - Portable devices



Five Steps to Mitigating Privacy/Data Security Risks

- 5) Establish a data breach incident response plan.
 - Identify the legal department as quarterback.
 - Establish a reporting structure to legal.
 - Set up key legal, IT, forensic, and PR vendor relationships.



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